

DECISION MEMORANDUM

**TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL**

DATE: FEBRUARY 12, 2011

**SUBJECT: IDAHO POWER'S THREE APPLICATIONS FOR A DETERMINATION
REGARDING POWER PURCHASE AGREEMENTS WITH MURPHY
FLAT MESA, MURPHY FLAT ENERGY AND MURPHY FLAT WIND,
CASE NOS. IPC-E-10-56, IPC-E-10-57 AND IPC-E-10-58,
RESPECTIVELY.**

On December 16, 2010, Idaho Power Company filed Applications requesting acceptance or rejection of three 20-year Firm Energy Sales Agreements (Agreements) between Idaho Power and Murphy Flat Mesa, LLC; Murphy Flat Energy, LLC; and Murphy Flat Wind, LLC. All three projects (Facilities) are located near Murphy, Idaho. The projects will all be “qualifying facilities” (QFs) under the applicable provisions of the federal PURPA.

THE AGREEMENTS

On December 15, 2010, Idaho Power and each of the three wind projects entered into their respective Agreements. Brian Jackson, Manager of American Wind Group, LLC signed each Agreement as the authorized manager of each QF Facility. Applications at 2. Under the terms of the Agreements, the wind projects each agree to sell electric energy to Idaho Power for a 20-year term using the current non-levelized published avoided cost rates as currently established by the Commission in Order No. 31025 for energy deliveries of less than 10 aMW. Applications at 4. The nameplate rating of each Facility is 25 MW. Under normal and/or average conditions, each Facility will not exceed 10 aMW on a monthly basis. Idaho Power warrants that the Agreements comport with the terms and conditions of the various Commission Orders applicable to PURPA agreements for wind resources. Order Nos. 30415, 30488, 30738 and 31025.

Each Facility has selected December 31, 2011, as its Scheduled First Energy Date and December 31, 2012, as its Scheduled Operation Date. Applications at 5. Idaho Power asserts that various requirements have been placed upon the Facilities in order for Idaho Power to accept the Facilities' energy deliveries. Idaho Power states that it will monitor the Facilities' compliance with initial and ongoing requirements through the term of the Agreements. Idaho Power asserts that it has advised each Facility of the Facility's responsibility to work with Idaho Power's delivery business unit to ensure that sufficient time and resources will be available for delivery to construct the interconnection facilities, and transmission upgrades if required, in time to allow each Facility to achieve its December 31, 2012, Scheduled Operation Date.

Idaho Power asserts that each Facility has been advised that delays in the interconnection or transmission process do not constitute excusable delays and if a Facility fails to achieve its Scheduled Operation Date delay damages will be assessed. *Id.* at 7. The Applications further maintain that each Facility has acknowledged and accepted the risk inherent in proceeding with its Agreement without knowledge of the requirements of interconnection and possible transmission upgrades. *Id.* The parties have each agreed to liquidated damage and security provisions of \$45 per kW of nameplate capacity. Agreement, ¶¶ 5.3.2, 5.8.1.

Idaho Power states that each Facility has also been made aware of and accepted the provisions in each Agreement and Idaho Power's approved Schedule 72 regarding non-compensated curtailment or disconnection of its Facility should certain operating conditions develop on Idaho Power's system. The Applications note that the parties' intent and understanding is that "non-compensated curtailment would be exercised when the generation being provided by the Facility in certain operating conditions exceeds or approaches the minimum load levels of [Idaho Power's] system such that it may have a detrimental effect upon [Idaho Power's] ability to manage its thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system." Applications at 7-8.

By their own terms, the Agreements will not become effective until the Commission has approved all of the terms and conditions and declares that all payments made by Idaho Power to the Facilities for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreement ¶ 21.1.

Idaho Power's Applications specifically note the Joint Petition it filed with the Commission on November 5, 2010, requesting an immediate reduction in the published avoided

cost rate eligibility cap from 10 aMW to 100 kW. Applications at 2. Idaho Power states that it is aware of and in compliance with its ongoing obligation under federal law, FERC regulations, and Commission Orders to enter into power purchase agreements with PURPA QFs. *Id.* at 3. However, Idaho Power asserts in each of its Applications that the Commission has specifically directed the utility “to assist the Commission in its gatekeeper role of assuring that utility customers are not being asked to pay more than the Company’s avoided cost for [its] QF contracts.” *Id.* at 3-4. Idaho Power further states that “the continuing and unchecked requirement for the Company to acquire additional intermittent and other QF generation regardless of its need for additional energy or capacity on its system not only circumvents the Integrated Resource Planning process and creates system reliability and operational issues, but it also increases the price its customers must pay for their energy needs.” *Id.* at 4.

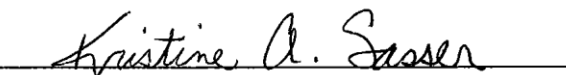
Idaho Power requests that its Applications be processed by Modified Procedure pursuant to Commission Rules of Procedure 201-204. IDAPA 31.01.01.201-.204.

STAFF RECOMMENDATION

Staff recommends that each Application be processed by Modified Procedure with a comment deadline of March 17, 2011.

COMMISSION DECISION

Does the Commission agree with the recommendation that each of these three Power Purchase Agreements be processed under Modified Procedure with a comment deadline of March 17?



Kristine A. Sasser
Deputy Attorney General

M:IPC-E-10-56_IPC-E-10-57_IPC-E-10-58_ks